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HEADLINE: Worker privacy right puts businesses to test

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"We basically believe most people are honest and want to work, but when it comes to issues such as substance abuse in the workplace, it is the employer's responsibility to take positive measures," said Tom Van Etten, senior vice president and director of human resources of the Sun Bank of Miami.

The bank, which has 9,000 employees in 25 branches, is concerned about the drug issue - and also about violating employees' privacy.

"We do not feel it's an invasion of the right to privacy to identify a hard drug user and say we don't want to employ you," said the bank executive, who has developed a program in his community called Business Against Drugs.

"If applicants object, that's their privilege. It's also our privilege to test," he said.

The bank also reserves the right to test current employees for cause, such as unusual behavior or poor work performance. "It's part of the statement employees sign at time of employment," said Van Etten. "We've never been sued."

Today, many businesses are worried about where the rights of employers begin and the rights of employees end, a problem that encompasses drugs, AIDS, alcohol abuse, smoking, computer monitoring of work and the right to collect and distribute information in employees' health and personnel files.

In the wake of federal laws banning polygraph tests and mandating that federal contractors maintain a drug-free workplace, corporations worry about managing employee rights while retaining the right to manage.

And workers justifiably are concerned about an increasing assault on their right to privacy: It's becoming less private.

"There are a number of different federal and state laws that require employers to acquire and maintain personal information on employees," said Joseph D. Levesque, managing director of Personnel Systems Consultants, a human resource and organizational management consulting firm in Citrus Heights, Calif.

"This information is not only legally mandated but also required to be retained . . . after employment separation."

Levesque, author of "People in Organizations: A Guide to Solving Critical Human Resource Problems," (American Chamber of Commerce Publishers, $62.95), also stresses that collecting "discretionary" information must be "able to stand the test of pertinence to the individual's job-related activities."

Sue Mesisinger, vice president of the American Society for Personnel Administration, based in Alexandria, Va., observes: "Employers are not collecting information for evil motives. They do it for business reasons. . . . There is a growing concept of employee rights, balanced with good labor-management relations."

Not everyone agrees. "The invasion of employees' privacy is an assault against their dignity and simply is uncalled for," said Irving M. King, partner in the Chicago labor law firm of Cotton, Watt, Jones & King. "It is not

necessary to the employer in the operation of a business."

King, who has represented employees for 30 years, points out, "There is no federal legislation protecting employees, though union contracts may contain some protection against unwarranted drug testing. Any invasion of privacy in an area that does not affect job performance is contrary to the basic freedoms that we should all enjoy in this country."

Management lawyers have a different view. "The failure to test a driver, for example, who is involved in a serious accident injuring others while impaired could expose the employer to a lawsuit alleging negligence in hiring the employee," said Barry A. Hartstein, attorney with the Chicago firm of Neal Gerber Eisenberg & Lurie.

"Employers must be careful in deciding what information is legitimately needed, how the information is used and what safeguards are implemented to avoid improper disclosures," he said.

Hartstein says nine states have information practices acts; 11 states, including Illinois, permit employees of private concerns to examine their own personnel files; and 16 states have credit reporting laws protecting employees.

A federal privacy law is needed, said David F. Linowes, professor of political economy and public policy at the University of Illinois at Champaign.

"We need legislation that says every organization dealing with people must adopt fair information practices," said Linowes, author of "Privacy in America: Is Your Private Life in the Public Eye?", (University of Illinois Press, $19.95).

"The individual who is abused by the firm should have the right to punitive damages up to $10,000 against the person who released the information - not the corporation," he said.

Linowes, a founding partner of Laventhol & Horwath, an accounting and management consulting firm, served as head of the U.S. Privacy Protection Commission from 1975 to 1977. He recently surveyed 126 Fortune 500 companies employing 3.7 million employees to learn their practices.

The professor found that 42 percent collect information without informing employees; 50 percent use medical information to make employment-related decisions; 50 percent use private investigators to verify information; and 80 percent give out credit information.

"Employees must know their rights," Linowes said. "Ask employers to see and copy your personnel files. When you give up sensitive information, do it on the condition it be used by the company only. Ask them not to give out credit information."

The professor adds: "Without federal or state laws, whether or not your employer complies is another matter."
